HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R. No.2879 of 2005
Date of decision : 06.02.2007

Rahul son of Kamal Kapur .....Petitioner

versus

Kewal Krishan and another .....Respondents

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.Sudeeep Mahajan, Advocate for the petitioner

Mr.D.S.Bali, Senior Advocate with
Mr.Naveen Gautam, Advocate for the respondents.

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JUDGMENT

HEMANT GUPTA, J.

The challenge in the present revision petition by the plaintiff is to the order dated 21.3.2005, passed by the learned trial Court, whereby an application filed by one Dev Raj for impleading him as defendant being co-owner alongwith Kewal Krishan, was allowed by the learned trial Court.

The plaintiffs filed a suit for permanent injunction on the basis of ownership having purchased the suit land vide sale deeds dated 21.7.1998 and 17.2.1999. It is the case of the plaintiffs that the defendant has pulled down a boundary wall on the plot in question on 13.3.2001 forcibly and illegally and, therefore, sought injunction against the defendant. It is the case of the original defendant Kewal Krishan that he has purchased the land measuring 4 kanals from one Om Parkash vide registered sale deed dated 9.1.2001, alongwith Dev Raj. It has been further pleaded that Dev Raj was in possession of the land as co-sharer

and after purchase, both the vendees constructed a shop which was damaged by the plaintiffs after filing of the present suit.

Dev Raj moved an application for impleading him as defendant, on the ground that the plaintiff while appearing as PW-5, has deposed that he has filed the present suit for injunction against Kewal Krishan and Dev Raj. Since Dev Raj is co-vendee with Kewal Krishan, he is required to be impleaded as defendant.

The learned trial Court has found that it is the case of the defendant that Dev Raj is co-vendee with Kewal Krishan vide sale deed dated 9.1.2001 which was subsequently amended on 30.4.2001. Therefore, Dev Raj is necessary and proper party in the present suit.

Learned counsel for the petitioner has vehemently argued that the evidence of the defendant was closed vide order dated 28.8.2003 as defendant has failed to conclude his entire evidence after availing number of effective opportunities. It is contended that the present application has been filed to wriggle out of the said order as the evidence of the original defendant was closed. The plaintiff has a right to choose the parties against whom the decree is sought. The applicant cannot force himself to become a party in a suit for injunction.

After hearing learned counsel for the parties, I am of the opinion that the order passed by the learned trial Court suffers from patent illegality and irregularity. The mere fact that Dev Raj is a co-owner with Kewal Krishan, is not a ground on the basis of which the said applicant can be impleaded as defendant in a suit for permanent injunction or mandatory injunction. The plaintiff has a dominant litus. He has a right to choose the parties against whom he seek injunction. The mere fact that the

applicant is a co-sharer is not a ground on the basis of which he can be impleaded as defendant, moreso when it is not his case that his other co-sharer is acting contrary to his interest and his interest is contrary to the interest of other co-owner.

In view of the above, the present revision petition is allowed. The impugned order passed by the learned trial Court on 21.3.2005 is set-aside and the application filed by Dev Raj for being impleaded him as defendant is dismissed.

(HEMANT GUPTA)
JUDGE

February 6, 2007
**mohinder*